

Office of Chief Counsel
Internal Revenue Service
memorandum

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to: Karen Michaels,
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subject: Movement of Estimated Tax Payments

This advice responds to your request for assistance. It may not be used or cited as precedent.

ISSUE

Does the Service have the authority to establish procedures for transferring tax year 2 estimated tax payments, which are claimed to have been submitted in error, to offset tax year 1 liabilities before the close of tax year 2.

CONCLUSION

No, the Service does not have the authority to establish procedures for transferring tax year 2 estimated tax payments, which are claimed to have been submitted in error, to offset tax year 1 liabilities before the close of tax year 2.

FACTS

When filing their annual returns, numerous taxpayers are mistakenly submitting payment for their liability for the current tax year (tax year 1) on tax year 2 Form 1040ES payment vouchers. This occurs when taxpayers believe the Form 1040ES vouchers are payment slips for current balances owed. Often, Form 1040ES is produced as part of tax software printouts without adequate explanation. These taxpayers often had unusual income reported for tax year 1 and normally have no estimated tax payment requirements. These payments are subsequently entered by the Service as a first installment estimated tax payment for tax year 2. The IRS receives numerous requests

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to transfer these erroneous estimated tax payments in order to satisfy the outstanding liability for tax year 1, but current policy does not permit the transfer. Instead, taxpayers must submit another payment to satisfy the liability for tax year 1 and wait until the close of tax year 2 to apply for a refund of the estimated tax.

LAW AND ANALYSIS

Under I.R.C. § 6402(a), overpayments may be credited against any outstanding tax liability and the balance may be refunded to the taxpayer. Under I.R.C. § 6401(a), a part of a payment of any internal revenue tax may only be deemed an overpayment at the close of the taxable year for which it was submitted.

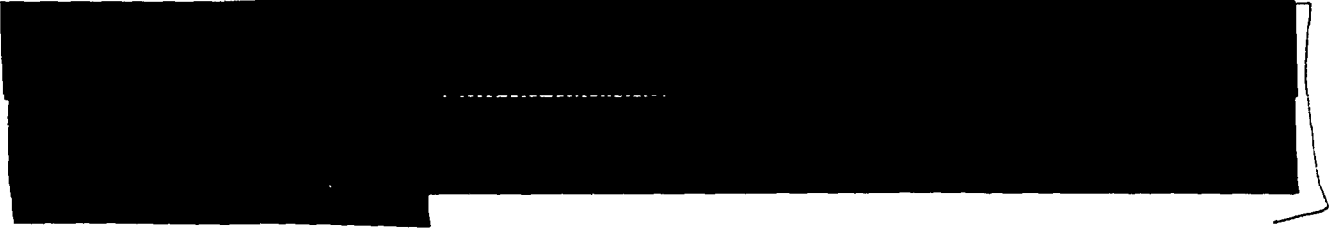
Under the given facts, taxpayers are mistakenly submitting payment on tax year 2 Form 1040ES payment vouchers, and once they realize the mistake, asking the Service to administratively transfer the payment to its intended account in order to offset their tax year 1 liability. Regardless of underlying taxpayer intent, a payment submitted on a Form 1040ES payment voucher and properly entered by the Service as an estimated tax installment is a payment under I.R.C. § 6401(a) and may not be considered an overpayment until the close of tax year 2.

The requested "transfer" of these payments of estimated tax, is essentially a request for a credit under I.R.C. § 6402(a). Since estimated tax payments may not be considered overpayments until the close of tax year 2, until that time, the Service does not have the authority to credit tax year 2 estimated tax payments against tax year 1 liabilities.

Rev. Rul. 54-149, applying former I.R.C. § 322, the predecessor of I.R.C. § 6402(a)¹, provides, "[p]ayments of estimated tax for a particular taxable year may not be refunded prior to the close of such taxable year, even though an amended declaration filed by the taxpayer after such payments were made may show an estimated tax liability of zero. Such payments may be refunded only after the close of the taxable year for which they are made, when the actual amount of taxes due and the amount of the overpayment may be correctly determined."

Although Rev. Rul. 54-149 only forbids refunds of estimated tax payments before the close of the applicable tax year, under I.R.C. § 6402(a), credits are applied to tax liabilities before issuing a refund of an overpayment. Refunds are unavailable until after the close of the tax year because then and only then can the "actual amount of taxes due and the amount of the overpayment ... be correctly determined." Rev. Rul. 54-149; I.R.C. § 6401. Therefore a logical application of the Revenue Ruling is that credits, like refunds, are also not available before the close of tax year 2 because an overpayment has yet to be determined. Accordingly, the Service does not have the authority to establish procedures for transferring erroneous tax year 2 estimated tax payments to satisfy tax year 1 liabilities before the close of tax year 2.

¹ Both former I.R.C. § 322, and I.R.C. § 6402(a) state, in general, that an overpayment is to be credited against any tax liability and the balance is to be refunded to the taxpayer.



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Please call Matthew Howard at (202) 622-4910 if you have any further questions.